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130192—37——1

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 795

UNITED STATES OF AMERICA, PETITIONER

v.

ANGIE CROOK WILLIAMS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above entitled case December 9, 1936.

OPINIONS BELOW

The District Court for the Northern District of Illinoi rendered no opinion. The opinion of the Circuit Court of Appeals is reported in 86 F. (2d) 746.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 9, 1936. The jurisdiction of

this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an agreement between the mother of a boy seventeen years of age and a recruiting officer of the United States Navy, under which the mother consented to her son's enlistment in the naval service upon the condition that a $10,000 contract of war risk term insurance naming her as beneficiary be carried on his life throughout the period of his enlistment, was binding on the United States and entitled the mother to death benefits under an insurance contract subsequently issued despite a written cancellation of the insurance by the insured eleven months prior to his death and the non-payment of premiums thereafter.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are copied in the Appendix, *infra,* pp. 12–16.

STATEMENT

The suit was brought by Angie Crook Williams, the respondent, hereinafter called the plaintiff, as the beneficiary named in a $10,000 contract of war risk term insurance issued to her son, Benson Williams, upon his enlistment in the United States Navy. In her declaration she alleged that the contract was in full force and effect when the insured was officially declared dead on June 30, 1921, and

that she was entitled to death benefits as the designated beneficiary (R. 2–4). The answer filed by the United States denied that the contract was in force on June 30, 1921, or that there was any liability on the part of the United States under the insurance contract for the reason that the insured cancelled his insurance by written request on July 20, 1920, and paid no premiums thereon after July 1920, resulting in a lapse of the contract at midnight August 31, 1920 (R. 5–7). Replying to this answer, the plaintiff contended for the first time that there was an agreement between herself and a recruiting officer under which insurance was to be carried by her son and that the cancellation was ineffective, alleging (R. 7–8):

> that at the time of the enlistment of said insured and the execution of the insurance contract herein involved said insured was an infant under the age of twenty-one (21) years, and that said defendant required said plaintiff herein as mother of said infant to sign a release and written consent for said enlistment and that said release or written consent had a provision therein that in consideration of said plaintiff executing said written release and consent, the said defendant herein would issue to said insured a certificate of war risk insurance, payable to said plaintiff, extending through the period of said enlistment or until said insured became twenty-one (21) years of age. That he became and was a party to said insurance

> contract and that said pretended cancellation of said insurance as alleged in said answer without notice to plaintiff was void and of no force and effect.

At the trial it was stipulated (R. 15, 16) that Benson Charles Williams, the insured, born August 27, 1901, enlisted in the United States Navy on January 13, 1919, at the age of seventeen years. On that date he applied for and was granted a $10,000 war risk insurance policy, naming his mother, the plaintiff, as beneficiary. In his application he authorized the deduction of premiums from his monthly service pay, and premiums were in fact deducted in this manner for the period from January 13, 1919, to July 1920. On July 20, 1920, when he was eighteen years of age he executed the following request:

> I hereby request that my insurance be reduced from $10,000 to none Dollars.

This request, properly witnessed, was forwarded through naval channels to the Bureau of War Risk Insurance. No premiums were deducted from his pay or paid in any other manner after July 1920.

Some eight months later Williams sailed as a member of the crew of the U. S. S. *Connestoga* from California bound for Samoa. The ship was never heard from after that date and the Navy Department officially declared all members of the crew dead as of June 30, 1921.

The evidence of the alleged agreement entered into between the plaintiff and the recruiting officer

consisted of the plaintiff's own testimony (R. 22); the testimony of her husband, Roland E. Williams (R. 19, 20–21), and a third party (R. 16). The form was not produced because apparently not of record (R. 21). The three witnesses testified, over the objection of Government counsel, that there was typewritten across the face of the form of the consent to enlistment which the plaintiff and her husband signed a clause providing that their son, the insured, carry a $10,000 policy of insurance during his period of enlistment, naming the plaintiff as beneficiary, and that their consent to his enlistment was made conditional upon the issuance and maintenance of such a contract.

The trial court rendered findings of fact, conclusions of law and a judgment for the plaintiff (R. 10–14) after overruling a motion for judgment made by Government counsel (R. 30) and refusing the requested findings of fact and conclusions of law in its favor presented on behalf of the Government (R. 30–34), to all of which the Government noted an exception. The court found that this alleged agreement was entered into at enlistment and that because of its provisions the insurance contract did not lapse, but instead was in force on June 30, 1921, the date of the insured's death.

The Circuit Court of Appeals affirmed the judgment of the trial court, holding that there was substantial evidence to support the finding that the agreement between the mother and the recruit-

ing officer had been entered into at enlistment; that because of this agreement and the son's minority, the attempted cancellation of July 20, 1920, was ineffective, at least without notice to the mother; that there was a presumption of continuing pay due the insured sufficient to cover premium deductions during the insured's service; and that therefore the policy was continued in force until the sailor's death on June 30, 1921.

SPECIFICATIONS OF ERROR TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the agreement between the mother and the recruiting officer was binding upon the United States by estoppel or otherwise.

(2) In holding that the agreement vested an interest in the war risk insurance in the mother as beneficiary which the insured was powerless to disturb.

(3) In holding that the common law doctrine of infancy applies to persons under the age of twenty-one in relation to their contracts of insurance with the Government.

(4) In holding that the cancellation of insurance was ineffective although made by the insured after he had attained the age of 18, when parental consent to his enlistment was no longer required.

(5) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals is in conflict with applicable decisions of this Court and with decisions of other Circuit Courts of Appeals, and is of possible far-reaching importance.

The Circuit Court of Appeals held that the alleged agreement entered into between the recruiting officer and the mother of the insured attempting to make the enlistment of the insured conditional upon the issuance and continuance in force of the war risk insurance contract on the life of her son was binding upon the United States.

(1) We submit that this holding is in conflict with the decisions of this Court that the United States is neither bound nor estopped by the acts of its officers and agents in entering into an agreement or arrangement in excess of their authority. *Wilber National Bank* v. *United States,* 294 U. S. 120; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409; *Sutton* v. *United States,* 256 U. S. 575, 579. There was no Federal statute or regulation authorizing or empowering a recruiting officer or any other agent of the Government to enter into any such agreement or arrangement on behalf of the United States.

(2) We submit that this holding is in conflict with the decision of this Court in *White* v. *United States,* 270 U. S. 175, that a beneficiary may not acquire a vested interest in a contract of war risk insurance which the insured is powerless to dis-

turb. The terms of the contract, found in part in the policies and in part in the statutes under which they were issued and the regulations promulgated thereunder (*White* v. *United States, supra; Lynch* v. *United States,* 292 U. S. 571), conferred upon the insured the right to cancel his insurance, in whole or in part, by written request duly witnessed and forwarded through certain channels to the Bureau of War Risk Insurance (T. D. No. 48, *infra,* pp. 14–15; War Risk Insurance Circular No. 1, *infra,* pp.15–16), and also conferred upon him the right to change the beneficiary at any time without the consent of the beneficiary (Section 402, War Risk Insurance Act, *infra,* pp. 12–13, and Bulletin No. 1, *infra,* pp. 13–14). In upholding this agreement, the Circuit Court of Appeals has sanctioned a material alteration in the war risk contract, a change both in the form and substance of that contract as provided by the statutes and regulations and as construed by this Court in *White* v. *United States, supra.* Here the court below has treated the contract as one between the beneficiary, the Government, and the insured, under which the beneficiary acquired a vested interest which could not be taken away by any act of his, whereas the war risk contract as construed by this Court in the *White* case was one in which the relations of contract were exclusively between the Government and the insured, with any interest which the beneficiary might acquire therein entirely dependent upon the

terms of the contract between the Government and the insured. In making this determination, the court below has likened the case to one where a party having an insurable interest obtains insurance upon another's life, thus acquiring a property right in the resulting contract which is protected against any attempted cancellation by the insured without notice to him. Discussing this feature of the case the court states (86 F. (2d) 746, 747):

> Consequently, the son and the government could not, by arrangement wholly between themselves, without notice to her, set at naught the specified condition. * * *

This expression is clearly in conflict with the principles announced in the *White* case that (p. 180):

> The only relations of contract were between the Government and him [the insured]. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she cannot claim more. * * *

See also *United States* v. *Sterling,* 12 F. (2d) 921 (C. C. A. 2d). William's insurance contract, like White's, was between the Government and him, and when he exercised the right thereunder of cancelling his insurance, his beneficiary, being a volunteer, could not complain.

(3) The present opinion announced for the first time the doctrine that the common law principles of infancy apply to Government insurance contracts, making them voidable during infancy and subject to disaffirmance upon attaining majority. This doctrine is in direct conflict with the principles announced by the Court of Appeals of the District of Columbia in *Von Der Lippi-Lipski* v. *United States,* 4 F. (2d) 168. In that case the court said (p. 169):

> From the general purpose and subject-matter of the War Risk Insurance Act, and the amendments thereto, it is apparent that Congress intended to extend to minors, who served in the armed forces of the United States, all of the rights and privileges, and to subject them to all of the conditions and limitations, contained therein. Minors are not excepted from its operation. No distinction is made as to age. They were not only eligible to service, but were drafted into the military and naval forces during the war, and the only limitation as to age is that provided by the laws and regulations pertaining to such service.

Moreover, the question is of paramount importance. Newly enlisted personnel of the Army, Navy, and Marine Corps may apply for and obtain Government insurance at the present time. Section 300 of the World War Veterans' Act, as amended by the Act of May 29, 1928, c. 875, Sec.

13, 45 Stat. 967, 968 (U. S. C., Title 38, Sec. 511). Many of the present enlistments, perhaps a majority, are of minors, and, if the contracts of Government insurance which these minors obtain are subject to the disability of infancy, as the opinion in the present case seems to hold, such infants could, for example, disaffirm their contracts of insurance upon attaining majority and recover back the premiums paid thereon. See *Mutual Life Insurance Co.* v. *Schiavone,* 71 F. (2d) 980 (App. D. C.), cited and relied upon by the court below in its opinion.

(4) Moreover, it should be noted that when the insured cancelled his insurance he was 18 years of age and parental consent was no longer necessary to his enlistment under the statute. (Sec. 2, Act of August 22, 1912, *infra,* p. 13.) It would seem to follow that he was emancipated from parental control in so far as his naval service was concerned and was free to disaffirm any contracts made in respect to such insurance. His cancellation was in effect a disaffirmance of the alleged agreement made while he was under the statutory age limit.

For the reasons stated, it is respectfully submitted that this application for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

MARCH 1937.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 400 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409, provides as follows:

> That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

Section 402 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409, provides in pertinent part as follows:

> That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or bene-

ficiaries, but only within the classes herein provided. * * *.

Section 202 of the War Risk Insurance Act of October 6, 1917, 40 Stat. 403, provides as follows:

> That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.

U. S. C., Title 34, Sec. 161 (Act of August 22, 1912, c. 336, Sec. 2, 37 Stat. 356), provides as follows:

> No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians.

Bulletin No. 1, promulgated by the Director of the Bureau of War Risk Insurance on October 15, 1917, prescribing the terms and conditions of war risk insurance, contains the following pertinent provisions:

* * * * *

> The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries.

* * * * *

> Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by him/her with the United States, and, if so to be deducted a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid, either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.
>
> * * * * *
>
> These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regulations thereunder now in force or hereafter adopted.

Treasury Decision No. 48, War Risk Insurance, September 29, 1919, made pursuant to Section 13 of the War Risk Insurance Act, provides in pertinent part as follows:

> The yearly renewable term insurance shall, however, lapse and terminate: * * *
> (c) Upon written request duly witnessed and forwarded through military channels to the Bureau of War Risk Insurance for cancellation of the insurance in whole or in

part, and corresponding cessation or reduction of the payment of premiums.

War Risk Insurance Circular No. 1 provides as follows:

NAVY DEPARTMENT,
BUREAU OF SUPPLIES AND ACCOUNTS,
Washington, D. C., November 15, 1918.

To Commandants, Commanding Officers, and Officers of the Pay Corps:

The following instructions are issued for the guidance of all concerned in the matter of War Risk Insurance and Family Allotments. They combine all instructions, completely revised to date, which have been issued. In the future all instructions regarding War Risk Insurance and Family Allotments will be issued from the Allotment Division, Bureau of Supplies and Accounts.

McGOWAN.

* * * * *

INSURANCE

* * * * *

8. In no case will Insurance premiums be prorated. The premium charged for insurance shall be entered on the debit side of the pay roll in the column headed, "War Risk Insurance Premiums." Checkage of one month's premium shall be made on the day the application is executed and, thereafter, one month's premium shall be checked on the first day of every month. Checkage must be made on the Navy pay roll of premium for every application for insurance executed by officers or men of the NAVY. Checkage of insurance premiums will continue while a man is in a pay status, or until the insurance is cancelled by written request

over the man's signature, forwarded through the officer of the Pay Corps carrying his account. The cancellation of insurance at the request of this insured will become effective on the first day of the month following that in which request is made.

* * * * *

14. The checkage of insurance premiums will take precedence over government indebtedness due to property loss, and loss of pay by sentence of deck court, summary court-martial, or general court-martial not involving prison confinement. Sentence of general court-martial involving prison confinement will operate to stop checkage of insurance premiums on the Navy pay roll. In such cases, the man should be instructed to remit, or have someone else remit, the premium directly to the Bureau of War Risk Insurance, or suffer his insurance to lapse. Government insurance may be cancelled for the reasons specified in Section 29 of the War Risk Insurance Act as amended 25 June 1918, or upon the request of the insured over his signature. In all cases where checkage of insurance premium is discontinued, notice thereof should be sent immediately to the Navy Allotment Officer on S. & A. Form 373.

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